

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121959-001

Humana Insurance Company

Respondent

Issued and entered
this 1st day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 20, 2011, XXXXX on behalf of her minor son, XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* On June 27, 2011, after a preliminary review of the material submitted, the Commissioner accepted the case for external review.

The case involves medical issues so the Commissioner assigned the matter to an independent review organization, which completed its review and sent its recommendation to the Commissioner on July 19, 2011.

II. FACTUAL BACKGROUND

Between October 16, 2010 and April 18, 2011, the Petitioner received health care benefits under a short-term limited benefit medical policy underwritten by Humana Insurance Company.

On November 6, 2010, the Petitioner fell while playing basketball and injured his right elbow. An ultrasound on November 17 revealed ulnar nerve damage for which surgery was recommended. Petitioner received an MRI, ultrasound, a cortisone injection, ulnar nerve transposition surgery, follow-up visits, and occupational therapy.

Humana denied coverage, ruling that the services were for treatment of a pre-existing condition. The Petitioner appealed the denial through Humana's internal grievance process. Humana upheld its denial and issued its final adverse determination letter dated April 19, 2011.

III. ISSUE

Did Humana correctly deny coverage for the Petitioner's medical care received between November 6, 2010 and March 23, 2011?

IV. ANALYSIS

Petitioner's Argument

According to the Petitioner's mother, Petitioner's right elbow was first injured on September 15, 2010, while playing football. On September 29, 2010, Petitioner had an x-ray of the elbow that came back negative. However, his doctor advised him to see a sports medicine physician to be sure. On October 27, 2010, the sports medicine physician recommended a MRI. On November 5, 2010, the results of the MRI also came back normal.

On November 6, 2010, the Petitioner fell while playing basketball and injured the right elbow area again. They again went to see the sports medicine physician who reviewed the results of the October 27 MRI and stated petitioner's elbow "couldn't be more normal." He was concerned about nerve damage with the new injury so he referred Petitioner to Dr. XXXXX for an assessment. In her request for external review, the Petitioner's mother wrote:

On November 17, 2010 we saw Dr. XXXXX...and he recommended an ultrasound. The ultrasound was done...on November 24...and verified that the diagnosis was ulnar nerve damage. Dr. XXXXX read the results and advised us that the surgery would be helpful but was not pressing. In order to hopefully have our son well for the upcoming baseball season, we scheduled surgery for December 9, 2010, at which time an ulnar nerve transposition was done. We would have waited had we ever felt that this would be deemed pre-existing, as it was not life threatening, nor did it fully inhibit him from normal, every day life. We have since seen Dr. XXXXX for two follow up visits – December 15, 2010 and January 26, 2011, along with a physical therapist for six visits.

I am submitting this letter to verify that although I believe that I am responsible for the charges through November 5, 2010, and any remaining deductible for my policy, I feel that Humana is responsible for charges accrued after November 6, 2010 as the injury at that time was not pre-existing.

The Petitioner's primary physician also wrote a letter on his behalf dated June 16, 2011, stating:

Prior to November 6th, 2011, my patient XXXXX had an x-ray and MRI of right elbow. It showed no sign of any abnormalities, consistent with the tendonitis. Post November 6th, 2011, after re-injuring his elbow in a separate incident, patient had a[n] ultrasound showing ulnar nerve damage present in his right elbow. Therefore I believe after reviewing the records, the injury is due to the second incident.

Respondent's Argument

In its final adverse determination of April 19, 2011, Humana explained its denial of coverage for the Petitioner's treatment:

We were unable to approve your appeal because it has been determined that XXXXX' right elbow pain is considered a pre-existing condition. You have a Short Term Medical policy with HumanaOne that does not cover any pre-existing conditions.

Your policy defines a pre-existing condition as any condition or illness that was diagnosed or treated by a doctor, or one that produced signs and symptoms within 5 years of their effective date. The state of Michigan also has a mandate that only allows us to look back 6 months from your effective date.

The medical records we received indicate that XXXXX was seen for complaints of right elbow pain which had been going on since September 15, 2010, when he was hit on the medial aspect of his elbow while playing football.

Therefore, because the injury occurred within the 6 months prior to your effective date it is considered a pre-existing condition. There is no documentation in the medical records that indicate that the services were due to a new injury on November 6, 2010.

Commissioner's Review

The Petitioner's policy excludes from coverage the treatment of pre-existing conditions which are defined as "any disease, illness, sickness, malady or condition which was diagnosed or treated by a provider or produced symptoms during the specified time period prior to the covered person's effective date."

The question to be resolved in this review is whether the Petitioner's treatment beginning on November 6, 2010, constituted treatment of a pre-existing condition. The question was presented to an independent medical organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer

assigned to this case is a physician in active practice who is certified by the American Board of Orthopedic Surgery and is a member of the American Academy of Orthopedic Surgeons. The reviewer's report summarized the Petitioner's medical care for his right elbow and offered the following analysis and conclusions:

In a letter dated May 11, 2011, by XXXXX, she claims a separate and more severe injury occurred on November 6, 2010, "my son was practicing basketball and fell on the basketball court sustaining an injury to the same elbow. . . . It was clear that this injury was more severe and he had trouble bending the elbow without pain. . . ." She indicated that is why the enrollee was referred to Dr. XXXXX, the MRI was normal, the ultrasound done on November 24, 2010 was abnormal, which was the reason for the surgery. She alleges that the consult with Dr. XXXXX was only to develop a "relationship" with a sports medicine physician.

* * *

Clinical Rationale for the Decision:

Despite the member's claim of a new injury, this is not substantiated by the records reviewed.

1. There is no record of a November 6, 2010 injury noted by Dr. XXXXX's office visit of November 9, 2010, three (3) days after the alleged injury. Also there is no mention of a second injury by Dr. XXXXX's note a week later.
2. The physical exam of all of the physicians seen by the member reports similar problems with the right elbow with tenderness over the medial epicondyle and ulnar groove.
3. Dr. XXXXX's interpretation of the MRI of October 27, 2010 indicates signs of inflammation over the posterior medial border of the elbow that would indicate that the MRI is not entirely normal.
4. Dr. XXXXX's operative note indicates ulnar neuritis that has not improved despite extensive non-surgical management, indicating a long term problem.
5. The decision to perform surgery was made before the ultrasound was done and was noted to be negative according to Dr. XXXXX's note.

There is no mention in any of the records of establishing a casual relationship with a sports medicine physician. All records indicate an ongoing problem with [the Petitioner's] elbow related to the injury of mid-September of 2010.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Humana Insurance Company for the services provided for dates of services November 9, 2010 – March 23, 2011, be upheld.

The Commissioner is not required in all instances to accept the IRO's recommendation.

However, a recommendation from the IRO is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16)(b). The IRO’s analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO’s recommendation should be rejected in the present case.

The Commissioner finds that Humana’s denial of coverage for the medical services the Petitioner received after November 6, 2010 through March 23, 2011, was consistent with the terms of the certificate.

V. ORDER

The Commissioner upholds Humana Insurance Company’s final adverse determination dated April 19, 2011. Humana is not required to cover medical expenses incurred after November 6, 2010, related to the Petitioner’s right elbow injury.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner